

# State and Local Government in Louisiana: An Overview 2008-2012 Term

## CHAPTER 3 — LOCAL GOVERNMENT

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In addition to the executive branch agencies discussed in the previous chapter, the management of many of the public affairs of Louisiana citizens is handled by local government. The governing authorities of the parishes, cities, and special districts assume a tremendous amount of responsibility for governance in important areas such as public safety, the use, development, and ownership of immovable property, and roads and other transportation matters.

This chapter focuses on four important aspects of local government:

- Part A presents information on the organization and structure of local governments.
- Part B discusses the local officials which the constitution requires.
- Part C deals with civil service systems which cover certain employees of local governments
- Part D covers local government finance.

### Part A. Structure and Organization

Despite the important areas for which local governments assume responsibility and despite the fact that some cities are older than the state, the American federal system has defined the state as sovereign with respect to its local governments. Consequently, all matters relating to the form and authority of local government are subject to provisions of state constitutional or statutory law. An understanding of how the state provides for local government, therefore, is important to understanding local government.

Primary units of local government in Louisiana are parishes and municipalities. The constitution uses the term “local governmental subdivision” to refer to them collectively. Another term that is important to a discussion of local government is “political subdivision” which is a parish, a municipality, or any other unit of local government, including a special district, authorized by law to perform governmental functions.

For Louisiana parishes and municipalities, there exists a traditional form of government which remains the most common form: the police jury system for parishes and the mayor-board of alderman form, as provided by the Lawrason Act, for municipalities. The statutes authorize alternatives to these traditional forms, and the constitution grants any parish or municipality the option of adopting a home rule charter. All of these forms will be discussed in this part, followed by a discussion of special districts and some recurring issues involving local government.

## Police Jury

Most Louisiana parishes are governed by a police jury. The size of a police jury is established by ordinance of the jury itself though, with some exceptions, it must have at least five but not more than fifteen members or the number of members authorized for that police jury on or before May 13, 1974, whichever is greater. (R.S. 33:1221)

Generally, a police jury may exercise only those powers authorized by the constitution or by law. (Const. Art. VI, §7) However, the constitution authorizes a police jury to exercise any power and perform any function necessary, requisite, or proper for management of its affairs, not denied by general law, if the exercise of this broad authority is approved by the electors of the parish.

The legislature over the years has authorized police juries to act on a very long list of matters including: making regulations for its own government; making and repairing roads, bridges, and levees; maintaining banks of rivers and natural drains, drainage ditches, and canals; levying taxes for parish expenses; establishing ferries and toll bridges; and providing support for the poor and those in necessitous circumstances (R.S. 33:1236). The police jury may enact ordinances and provide for their enforcement by imposing fines or imprisonment. Such ordinances may be prosecuted by criminal process of indictment or information. The police jury may also provide for enforcement of ordinances by fine or forfeiture to be collected by civil process before any court of competent jurisdiction. (R.S. 33:1242) However, no police jury or any other local government may define or provide for the punishment of a felony. (Const. Art. VI, §9)

### Forms of Parish Government

- Police Jury
- Parish Commission
- Home Rule

## Parish Commission

As an alternative to the police jury form of government, any parish, except Orleans, may elect to become organized under the parish commission plan. At the present time, no parish uses this form of government. To adopt such a plan, there must be a petition of fifteen percent of the electors of the parish. The president of the police jury is then required to call a special election and submit the proposition of organizing as a parish under the commission plan to the voters of the parish. If the proposition is approved by a majority of the votes cast, a commissioner of public affairs, a commissioner of finance, and a commissioner of public improvements are elected at large at the next general state and parochial election. These three commissioners constitute a board of commissioners which is vested with all the powers and duties vested in or imposed upon the police jury. (R.S. 33:1271 et seq.)

The commissioners serve for a term of four years and each commissioner must supply a bond before assuming the duties of his office. The commissioner of public affairs is head of the department of public affairs and has control of all public buildings and property of the parish, of public health and sanitation, and care and maintenance of paupers. He is also the ex officio president of the board of commissioners. (R.S. 33:1275 and 1276)

The commissioner of finance is the head of the department of finance and has charge of all

monies, credits, and securities of the parish and all receipts and disbursements. He is also treasurer of the parish and ex officio clerk of the board of commissioners. The commissioner of public improvements is the head of the department of public improvements and has charge and control of public roads, ways, bridges and ferries, their construction, repair, and maintenance. (R.S. 33:1276)

Any parish which operates for more than six years under the commission plan may abandon such organization and resume its original form of government. To abandon such a plan, there must be a petition of not less than 30% of the electors of the parish. The board is then required to call a special election and submit the proposition to abandon the commission plan to the voters of the parish. If the proposition is approved by a majority of the votes cast, the officers elected at the next succeeding quadrennial election shall be those prescribed for parishes who have not adopted the commission plan. Upon the qualification of the officers, the parish shall resume its original form of government. (R.S. 33:1285)

## MUNICIPAL GOVERNMENT

The procedure for incorporating a new municipality and establishing the form and powers and duties of its government has evolved dramatically since Louisiana became a state. Generally this evolution has been in the direction of greater local autonomy.

Prior to 1879, municipalities were created by legislative Act. The 1879 Constitution prohibited the legislature from enacting any local or special law creating corporations or amending their charters, and in 1882, the first general statute was enacted establishing procedures for municipal incorporation. The Constitution of 1898, however, again provided that local or special laws creating municipal corporations could be passed by the legislature provided the municipality had a population of at least 2500 inhabitants. This remained true until 1952 when the 1921 Constitution was amended to prohibit the legislature from passing any further local or special laws creating municipal corporations. The 1952 constitutional amendment did allow the legislature to amend or repeal existing special legislation, and similar provisions have been retained in the 1974 Constitution. (Art. VI, §2)

### Forms of Municipal Government

- Mayor-Board of Aldermen (Lawrason Act)
- Commission
- Commission-City Manager
- Special Legislative Charter

When the legislature was in the business of creating municipalities, each creating Act served as the municipality's charter and it set forth the form of government as well as the municipality's powers and duties. However, once municipalities were allowed to incorporate independently of the legislature, a general charter was needed to provide for the form of government and the powers and duties of new municipalities. In 1898, the legislature passed the Lawrason Act to provide for such governance. The Lawrason Act provided only one form of government, the mayor-board of aldermen form.

Today in Louisiana, the picture of municipal governance is a complex one. Some of the municipalities created around the turn of the century continue to operate under their special legislative charters. Most small to mid-sized municipalities in the state operate under the Lawrason Act. The Revised Statutes also provide two alternatives to the mayor-board of aldermen form: the commission and the commission-city manager. In addition, several

municipalities, especially the larger ones, have adopted their own home rule charters. (For discussion of municipal home rule, see "Home Rule Charters" beginning on the next page.)

### Mayor-Board of Aldermen Form (Lawrason Act)

The officers of a Lawrason Act municipality are a mayor, aldermen, a chief of police, a tax collector, and a clerk. The number of aldermen varies from three to nine, depending upon whether the municipality is a village, town, or city (a classification determined by population). The mayor is elected at large. Aldermen are elected pursuant to statute (according to the number of aldermen, a certain number are elected by districts and a certain number at large) or the board may establish, by ordinance, a different manner of electing aldermen. The Lawrason Act generally provides that the police chief is elected at large. However, the act also provides that, if the board of aldermen receives a petition signed by twenty-five percent of the qualified municipal electors, it shall call an election on the question of making the police chief an appointed officer. In addition, special provisions provide for appointed chiefs in a number of municipalities. (For further discussion of elected v. appointed police chiefs, see "Recurring Issues" beginning on page 3A-7.) Terms of office for municipal elected officials are four years. After each regular municipal election, the mayor and board of aldermen appoint a clerk, tax collector, and all other necessary officers. (R.S. 33:381 et seq.)

The powers of a mayor-board of aldermen municipal government were originally limited to those specified in the act itself. This often hampered local officials in their administration of municipal affairs. In 1985-86, the first comprehensive revision of the Lawrason Act since its enactment in 1898 was undertaken. Among the significant features of this revision are: (1) the grant of authority to municipalities to exercise any power and perform any function necessary, requisite, or proper for the management of their affairs not denied by law; (R.S. 33:361) and (2) delineating the respective powers and duties of the officials of a Lawrason Act municipality, particularly by designating the mayor as the chief executive officer and the board of aldermen as the legislative body of the municipality. (R.S. 33:362)

### Commission Form

Any municipality with a population of 2,500 or over, except New Orleans, may choose the commission form of government by majority vote of the electors of the municipality. An election must be called by the mayor or governing authority upon petition of 25% of the electors. If adopted, the plan becomes effective after the terms of the municipal incumbents have expired. (R.S. 33:501 et seq.)

The law providing for the commission plan does not establish specific powers for municipalities incorporated under the plan, but rather provides that it prevails over conflicting provisions of the municipal charter at the time the plan becomes effective. Any prior powers of the municipality (conferred by charter or law) not in conflict with the statute are preserved unimpaired. The law also authorizes the municipal council to exercise all powers, duties, and functions of the municipal authorities under the municipal charter prior to adoption of the commission plan. (R.S. 33:506 and 531)

In accordance with the commission plan, municipalities are governed by an elected council. In the case of municipalities with a population of 100,000 or more, the council must consist of five members – a mayor and four councilmen; municipalities with a population of less than 100,000 are required to have councils of three members – a mayor and two councilmen. Council members are elected at large for four-year terms (R.S. 33:522). The law provides that any

vacancy in an elective office is filled by appointment of the governor upon the advice and consent of the Senate. (R.S. 33:522)

The council appoints the following additional municipal officers: municipal attorney, secretary-treasurer and tax collector, chief of police, fire department chief, auditor, civil engineer, municipal physician, and any other necessary officers and assistants. However, only the fire chief, police chief, and those officers necessary for the efficient transaction of municipal affairs are to be appointed in cities with a population of under 40,000. Subject to applicable civil service laws, these officials and assistants may be removed by a majority vote of the council members (R.S. 33:523).

Depending upon the number of council members authorized, the law provides for either three or five municipal departments. The powers and duties of the council are distributed among these departments, as determined by the council (R.S. 33:531).

### Commission-City Manager Form

In a municipality adopting the commissioner-manager form of government, the governing body is the commission and the chief administrative officer is the city manager. This form may be adopted by any municipality of 2,500 or more inhabitants, except New Orleans. Adoption requires a majority vote of the electors of the municipality at an election for the purpose called upon petition of electors equal in number to 33% of the votes cast for all candidates for mayor at the last preceding general election in the municipality. The powers of the municipality under this form are enumerated in R.S. 33:621-625.

The law requires that the commission consist of five citizens elected at large to serve four-year terms. The commission selects one of its members as chairman who serves as acting mayor and is recognized as the official head of the city (R.S. 33:631 and 641).

The city manager is the administrative head of the municipal government, responsible for the efficient administration of all departments. He is appointed by and serves at the will of the commission, and is also subject to recall by the people. His powers and duties are enumerated in the law and include but are not limited to the following: exercising control over all departments, except the departments of education and law; appointing and removing all department directors and employees, subject to applicable civil service law (the department of law is excepted in part from this provision); and keeping the commission fully advised as to the financial condition and needs of the municipality (R.S. 33:681-682).

The commission may establish the functions of such departments for the management of municipal affairs as may be necessary and may discontinue them or create new departments. Unless otherwise prescribed by ordinance, the following departments are established: law, public service, public welfare, public safety, and finance (R.S. 33:691).

### HOME RULE CHARTERS

It is a well-recognized rule of law that local governmental subdivisions (parishes and municipalities) are creatures of the state, may be abolished by the state, and may be vested with such powers and authority as determined by the state. Without constitutional limitations, local governmental subdivisions are at the mercy of the legislature. The Louisiana Constitution, however, grants general authority to any Louisiana municipality or parish to draft, adopt, and amend a home rule charter.

There are several facets of the local autonomy which comes with adopting a home rule charter.

First, through the charter process, the citizens select their own form of government and decide how powers and duties will be distributed in that government. Once the charter is adopted, the legislature is constitutionally prohibited from enacting any law which changes or affects the structure and organization or the particular distribution and redistribution of the powers and functions of the local government. (Const. Art. VI, §6)

Second, a charter may provide the local government with the authority to exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with the constitution. (Const. Art. VI, §5) This is the reverse of the traditional understanding of local government authority under which local governments have only the power explicitly granted to them.

And third, the constitution grants some degree of protection from legislative interference in the exercise of power. The fact that a charter government can exercise any power not denied by general law means that a power cannot be taken away from a local government by a local law.

Broadly speaking, a home rule charter is prepared by a local charter commission and then submitted to the voters for approval. The constitution authorizes appointment or election of the members of the commission. The local governing authority is required to provide for the election of a commission if it is petitioned by ten percent or ten thousand, whichever is fewer, of the electors of the subdivision.

The statutes flesh out these requirement for the selection of a charter commission. (See R.S. 33:1395 et seq.) A charter commission consists of not fewer than seven but not more than eleven members. The commission is required to submit a proposed charter to the governing authority within eighteen months of taking office. Members of the commission serve until the charter is finally adopted or rejected by the voters or until the end of the eighteen-month period. A home rule charter must include a method for amending the charter, but all amendments are subject to voter approval.

Home Rule Charters Who has a home rule charter? <sup>1</sup>		
<u>Municipalities</u>		
Alexandria	Hammond	Natchitoches
Baker	Jennings	Oak Grove
Berwick	Kenner	Patterson
Bogalusa	Lake Charles	Shreveport
Bossier City	Leesville	Slidell
Covington	Mandeville	Sulphur
Creola	Monroe	Thibodaux
Dequincy	Montgomery	West Monroe
DeRidder	Morgan City	Zachary
Donaldsonville		
<u>Parishes</u>		
Ascension	Livingston	St. Landry
Caddo	Plaquemines	St. Martin
Iberia	St. Bernard	St. Mary
Iberville	St. Charles	St. Tammany
Jefferson	St. James	Tangipahoa
Lafourche	St. John the Baptist	Washington
		West Baton Rouge
<u>City-Parishes</u>		
Baton Rouge-East Baton Rouge Parish		
Houma-Terrebonne Parish		
Lafayette-Lafayette Parish		
New Orleans-Orleans Parish		

<sup>1</sup> As of November, 2007

The constitution also authorizes consolidation of local governments under a single charter. Constitution Article VI, Section 5(D) provides that two or more local governmental subdivisions located within the boundaries of one parish may adopt a home rule charter subject to voter approval. (A local governmental subdivision is defined by the constitution to mean a municipality or a parish.)

A variety of plans of parish, municipal, and consolidated government exists under home rule charters. For example, East Baton Rouge Parish and the city of Baton Rouge have a consolidation of the city and parish government; in Orleans Parish, the parish and city are coterminous and operate under a single governing authority; and in Jefferson Parish, the parish governing body is a parish council.

#### What is a Political Subdivision?

Many constitutional and statutory provisions are relevant to all units of local government: cities, parishes, and special districts. Other provisions are relevant to both cities and parishes but not to special districts. For the purpose of making this distinction, the constitution includes the following defined terms; these definitions apply generally and unless a term is otherwise defined in a specific instance.

Local governmental subdivision means any parish or municipality.

Political subdivision means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

Source: Const. Art. VI, §44

#### SPECIAL DISTRICTS

In addition to municipalities and parishes, Louisiana, like other states, has found it expedient to create other local governing authorities. A special district is one such authority.

The major difference between a special district and a city or parish is that a special district is usually created to perform one major function. At one time, districts were usually created to provide some particular service to a rural area; water or fire protection for example. Today there are numerous types of special districts, and they are becoming common in suburbs and inner cities also.

Special districts are most often governed by a commission or board appointed by local or state officials or some combination thereof. The commissioners are charged with executing the function of the particular district and are usually granted some taxing and borrowing authority in order to generate funds for such purpose. The authority of the commission is limited to a specified geographic area, but such area can be a part of a parish or city or a multiple parish area.

Special districts are created through a variety of means. Some are created by the legislature individually by local legislative acts. Many of the more common types of districts, e.g. fire protection and hospital service districts, are created by parishes or municipalities pursuant to a general law granting such authority. The constitution allows the legislature to grant special districts the power to levy taxes and issue bonds.

#### RECURRING ISSUES

While the state government is ultimately responsible for all matters of governance left to it by federal law, local governments play a big role in many of the day to day details of maintaining the orderliness and security of the communities in which people live. For example, most police

and fire protection is provided by city or parish governments or their officials or special service districts. Another important aspect of this role is the web of authority and functions local officials have with regard to immovable property (i.e., land and buildings). Still another aspect of this role is the question of extending the boundaries of a municipality and the impact it may have on parish government. The following discussion presents some of the ways local governments are involved in public safety, housing, and the management, development, and use of property.

### Annexation

The legislature has delegated the power of annexation to municipalities and has authorized annexation by petition (R.S. 33:151 et seq.) and ordinance. (R.S. 33:171 et seq.) As municipalities have grown and expanded to fill their boundaries they have experienced the need to annex adjacent properties into the municipal limits. Often this is in response to petitions from citizens outside the municipality wanting to avail themselves of amenities such as water, sewer, lighting, streets and, in some instances, gas and electricity.

Sometimes the need for annexation arose because the city had expanded around an area and it was necessary to take the area into the municipality, but there were no resident property owners nor registered voters and the law would not permit such annexation. Recent efforts by the legislature have resulted in a procedure being adopted which would allow such annexation.

Another area of contention has been over the question of revenue loss to the parish governing authority when municipal annexation occurs which has been even more contentious when the municipal annexation has crossed parish lines. Legislation was adopted in individual cases, but more recently legislation has been adopted, affecting all annexation, which provides for a sharing of revenue and establishes a procedure for resolution of conflicts by arbitration.

### Blighted/Abandoned/Adjudicated Property

Local governments are involved in insuring the security and safety of structures and other property within their respective jurisdictions. Most parishes and municipalities are authorized to require that property be maintained in a safe and sanitary condition. As a result of the failure of many property owners to comply with such requirements, many of these properties have been adjudicated to local governments. However, in recent years local governments have suffered financial burdens as a result of the expenses associated with demolishing or maintaining these properties.

With the devastation caused by Hurricanes Katrina and Rita many more properties have been adjudicated to parishes and municipalities creating additional financial burdens. The legislature has enacted many bills in an effort to expand the laws and constitutional provisions regarding the sale by local governments of tax adjudicated property and to facilitate the involvement of nonprofit housing and historical preservation groups with local governments in the renovation of blighted housing.

### Housing

Another public welfare issue for which local governments assume responsibility and which involves them in property matters is housing the residents of their respective communities. Hurricanes Katrina and Rita displaced an unprecedented number of people and caused physical and economic devastation of such a magnitude that it will take many years before the affected



region can be rebuilt and many of those displaced can return home. Working together, Governor Blanco, the Louisiana Recovery Authority and the Office of Community Development created The Road Home program to help residents affected by these storms get back into their homes as quickly and fairly as possible. The Road Home provides a homeowner assistance program as well as two major rental housing programs, which are the Small Rental Property Repair Program and the CDBG-LIHTC "Piggyback" Program.

The program has been the subject of much criticism since inception. Many public officials as well as residents affected by the storms have voiced concerns with regard to the progress of the application process as well as the disbursement of funds to program applicants. The effectiveness of the management of The Road Home program by ICF International, the company hired for this purpose, has also been the subject of fierce debate. Many property owners in Louisiana still face uncertainty about whether they can or should rebuild their homes.

## Land Use

Among the factors which are important in making a community livable is the proximity of various types of activities to each other. For example, the job of making sure schools are near homes and heavy industry is fairly distant from both requires a great deal of planning and effort by local governing authorities. The state has established some parameters for exercising this authority.

Subject to uniform procedures established by law, a local governmental subdivision (parish or municipality) may: adopt regulations for land use, zoning, and historic preservation; create commissions and districts to implement those regulations; review decisions of such commissions; and adopt standards for the use, construction, demolition, and modification of areas and structures. (Const. Art. VI, §17) The legislature has enacted general laws authorizing and regulating zoning and building restrictions in municipalities (R.S. 33:4721 et seq.) and parishes. (R.S. 33:4780.40 et seq.) In addition, the legislature has enacted laws authorizing and providing for local historic preservation. (R.S. 25:731 et seq.)

With respect to more long range plans, the statutes authorize municipalities and parishes to create planning commissions. (R.S. 33:101 et seq.) Such commissions are charged with the responsibility of formulating a master plan for the physical development of the area. Pursuant to such plan, the commissions also oversee the placement of roads and the subdivision of property for residential use.

## Public Safety/Police Chiefs

In many Lawrason Act municipalities in recent times it has become very difficult if not impossible to find qualified persons to run for the office of chief of police. Since the office is elective, any candidate has to be an elector of the municipality and has to be interested in running for the office, a daunting task to some individuals, and sometimes no one qualifies. Municipalities have argued that if the position were not elective they could appoint qualified non-residents to the position of chief of police and in recent years the legislature has amended the Lawrason Act to provide for the appointment of the police chief in many individual municipalities. More recently the legislature has enacted legislation which makes it easier for the governing authority in Lawrason Act municipalities with a population of 2,500 or less to call an election on the issue of whether to elect or appoint a chief of police. (R.S. 33:381.2)

Other issues affecting appointed chiefs of police in some municipalities have revolved around

the question of the authority of the mayor to appoint and remove individuals of the mayor's choosing to the position of chief. In municipalities of 7,000 population or above the appointed chief is under civil service and is a classified employee who is appointed and removed under the laws governing civil service. Recently the legislature has amended the civil service laws for certain municipalities to permit the mayor greater latitude in appointing and removing the chief of police.

### Tax Increment Financing

Local governmental subdivisions and certain special districts are authorized to use tax increment financing (TIF) as a tool to provide financial incentives to stimulate private investment in a designated area. (R.S. 33:9020 et seq.) TIF amounts to subsidizing current economic development by committing a portion of the projected revenues of the development. The local government freezes the taxes within the district at their pre-TIF level. After completion of the project, the new revenue generated beyond the pre-TIF level is used to pay the developer back for a portion of his costs.

As more local governments have turned toward the use of TIF, the mechanism has come under attack as being ineffective, inefficient, and inequitable. Some argue that TIF can impose financial burdens on local governments by not only reducing its revenue base but also increasing operating costs (such as fire and police protection) without providing offsetting resources. Others argue that TIF will confer benefits on certain businesses located within the district at the expense of those businesses located outside of the district. The Louisiana Supreme Court has struck down the use of TIF by certain special districts. The court ruled that taxes that have been dedicated by the voters for particular purposes cannot be diverted to other purposes without voter approval.

### Uniform Construction Code

As a result of the widespread damage caused by Hurricanes Katrina and Rita, the Legislature enacted and mandated a state uniform construction code to promote public safety and building integrity. Act No. 12 of the 2005 First Extraordinary Session governs new construction, reconstruction, additions to homes previously built to the International Residential Code, extensive alterations, and repair of buildings and other structures and the installation of mechanical devices and equipment therein. The code establishes uniform performance standards providing reasonable safeguards for health, safety, welfare, comfort, and security balanced with affordability for the residents. The new code went into effect statewide on January 1, 2007. Many local governments continue to seek funding to train code officials and members of the building industry to accurately implement the code across the state.